

[Parties and Counsel Listed on Signature Pages]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA - OAKLAND DIVISION

IN RE: SOCIAL MEDIA ADOLESCENT
ADDICTION/PERSONAL INJURY
PRODUCTS LIABILITY LITIGATION

THIS DOCUMENT RELATES TO:

ALL ACTIONS

MDL No. 3047

Case No. 4:22-md-03047-YGR

Honorable Yvonne Gonzalez Rogers

**DEFENDANTS' BRIEF IN SUPPORT OF
UNOPPOSED REQUEST FOR JUDICIAL
INTERCIRCUIT ASSIGNMENT**

Pursuant to Case Management Order No. 14 (ECF No. 883) and the May 21, 2024, informal case conference, Defendants Meta Platforms, Inc. f/k/a Facebook, Inc., Facebook Operations, LLC, Facebook Payments, Inc., Instagram, LLC, Siculus, Inc., TikTok Inc., ByteDance Inc., ByteDance Ltd., TikTok Ltd., TikTok LLC, Snap Inc., YouTube, LLC, and Google LLC (collectively referred hereinafter as the “Defendants”), hereby request that the Court seek temporary intercircuit assignments in each of the following jurisdictions specifically for the following bellwether cases selected to date to enable the Court to preside over the trials of these four cases, which Defendants selected pursuant to Case Management Order No. 10.¹ *See* 28 U.S.C. § 292(d).

<u>Case Name</u>	<u>Case Number</u>	<u>Jurisdiction for Intercircuit Assignment Post-Remand</u>
<i>Dymand McNeal v. Meta Platforms, Inc., et al.</i>	4:23-cv-01092	Eastern District of Pennsylvania
<i>Klinten Craig v. Meta Platforms, Inc., et al.</i>	4:22-cv-05890	Western District of Kentucky
<i>DeKalb County School District v. Meta Platforms, Inc., et al.</i>	4:23-cv-03047	Northern District of Georgia
<i>Baltimore City Board of School Commissioners v. Meta Platforms, Inc., et al.</i>	4:23-cv-04064	District of Maryland

Under 28 U.S.C. § 292, the Chief Justice of the United States “may designate and assign temporarily a district judge of one circuit for service in another circuit, either in a district court or court of appeals, upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises.” 28 U.S.C. § 292(d); *see, e.g., United States v. Claiborne*, 870 F.2d 1463, 1466 (9th Cir. 1989) (assignment appropriate “whenever a chief judge of a circuit certifies ‘a need’” and the chief judge’s discretion is “broad” and flexible). In the context of multidistrict litigation, intercircuit transfer is a well-recognized method to permit MDL judges to preside over trials of

¹ As discussed during the May 21, 2024, informal case conference, the Personal Injury and School District Plaintiffs do not oppose the relief Defendants request herein.

remanded cases that are not properly venued in the MDL district under 28 U.S.C. § 1407 and *Lexecon v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998). See Federal Judicial Center, et al., *Bellwether Trials in MDL Proceedings*, at 14 (2019) (“[T]o avoid Lexecon issues altogether, the MDL transferee judge could hold bellwether trials in the federal districts where the cases were originally filed. To do so, the transferee judge would need to obtain an intercircuit or intracircuit assignment to sit by designation under 28 U.S.C. § 292.”); Federal Judicial Center, et al., *Manual on Complex Litigation* § 20.132 (MDL court may “seek an intercircuit or intracircuit assignment pursuant to 28 U.S.C. § 292 or 294 and follow a remanded action, presiding over the trial of that action in that originating district.”).

Such a procedure not only avoids *Lexecon* issues but also “allow[s] the parties to benefit from the [MDL] Court’s knowledge of” the litigation and “minimize[s] delay and expense.” *In re Mentor Corp. Obtape Transobturator Sling Prods. Liab. Litig.*, No. 4:08–MD–2004, 2014 U.S. Dist. LEXIS 22638, at *5 (M.D. Ga. Feb. 24, 2014) (“the Court will seek an inter-circuit assignment with the understanding that the Court would preside over the trial of this matter in the United States District Court for the District of Minnesota.”). Thus, transferee MDL courts have routinely sought (and obtained) intercircuit assignment to try remanded cases. See, e.g., *In re: Boston Scientific Corp. Pelvic Repair Sys. Prods. Liab. Litig.*, No. 2:12-md-2326, Pre-Trial Order No. 91, ECF No. 757 (S.D.W. Va. Apr. 11, 2014) (Apr. 11, 2014) (“At the conclusion of pretrial proceedings, it will be necessary to remand the cases to the Southern District of Florida, and I intend to try the consolidated cases there by intercircuit assignment[.]”); *In re: Welding Fumes Prods. Liab. Litig.*, MDL No. 1535, Suggestion of Remand (*Jowers*), ECF No. 260 (J.P.M.L. Nov. 13, 2007) (“[T]rial of the *Jowers* case – even in a remote District – would serve well to advance the resolution of the MDL as a whole.”); *In re Fluoroquinolone Prods. Liab. Litig.*, No. 0:15-md-2642, ECF No. 433 at 7 (D. Minn. Jun. 5, 2017) (“The Bayer Defendants have indicated their intent to not waive *Lexecon* for any case in the MDL. Therefore, the above-trial schedule will also be subject to approval of the intracircuit and/or intercircuit assignment of this Court to conduct the trials in the judicial districts where the Cipro Only Bellwether Trial Cases were originally filed and court room availability.”); *In re Air Crash Disaster Near Chicago, Illinois on May 25, 1979*, 476 F. Supp. 445, 449-50 n.5 (J.P.M.L. 1979) (“In appropriate circumstances,

various transferee judges have even obtained an intercircuit assignment . . . to conduct the remaining pretrial proceedings and trial in a transferor district,” citing two prior examples).²

For example, in *In re Mentor*—an MDL based in the Middle District of Georgia—the parties were unwilling to waive their 28 U.S.C. § 1407(a) right to remand a lawsuit to Minnesota (the state where the case originated). As a result, the MDL judge could not “conduct the trial of th[e] action in the United States District Court for the Middle District of Georgia.” 2014 U.S. Dist. LEXIS 22638, at *4 (citing *Lexecon*, 523 U.S. at 40). However, “[i]n the Court’s view, inter-circuit assignment would allow the parties to benefit from the Court’s knowledge of [the MDL] and would minimize delay and expense.” *Id.* at *5. In addition, because the trial would be the first Minnesota-based trial, it “would provide a good bellwether for the other Minnesota cases still pending in the MDL proceeding.” *Id.* Accordingly, the MDL judge indicated that he would seek an inter-circuit assignment so that he could preside over the trial in that Minnesota case. *Id.* The following day, the MDL judge sent a letter to the circuit executives of the Eighth and Eleventh Circuits (covering the transferor and transferee districts, respectively) seeking approval from the circuit chief judges and explaining that based on his “familiarity with the issues in this action . . . it would be preferable for [him] to travel to Minnesota to try this case rather than burdening one of the judges from the District of Minnesota.” *Cline v. Mentor Worldwide LLC*, No. 4:10-cv-5060-CDL, ECF No. 83 (M.D. Ga. Feb. 25, 2014).

This Court should do the same. Because the above-listed Plaintiffs have notified Defendants of their intent to object to trial in this Court pursuant to *Lexecon*, their cases cannot be tried in the Northern District of California. Rather, upon completion of pre-trial proceedings, those actions must be remanded to the courts in which they were originally filed, or deemed to have been originally filed,

² Former Chief Judge Kozinski once declined to issue a certificate of necessity in the context of multidistrict litigation, reasoning that judicial economy alone does not warrant an intercircuit assignment based upon a strict interpretation of the Chief Justice’ Guidelines for the Intercircuit Assignment of Article III Judges. See *In re Motor Fuel Temperature Sales Pracs. Litig.*, 711 F.3d at 1055 (former Chief Judge Kozinski denying request for a certificate of necessity that would have allowed MDL judge in the District of Kansas to try MDL cases post-remand in California). This decision does not control the inquiry, however. It is an administrative decision by a former judge in his capacity as Chief Judge, which is neither binding on this Court, nor on any of the chief judges from whom this Court will be seeking certificates of necessity. No other chief judge has construed the Guidelines in this manner. Nor has Chief Justice Roberts adopted this interpretation, as he has consistently designated MDL judges for intercircuit assignment to preside over bellwether trials.

pursuant to Case Management Order No. 4 (ECF No. 119). *See* 28 U.S.C. § 1407(a).³ Given this Court’s familiarity with the issues in this MDL proceeding, intercircuit assignment would enable this Court to preside over the trials of these cases post-remand, and ultimately ensure that the actions are tried efficiently and effectively. *See In re Soc. Media Adolescent Addiction/Personal Injury Prods. Liab. Litig.*, 637 F. Supp. 3d 1377, 1378 (J.P.M.L. 2022) (creating Social Media MDL “to promote the just and efficient conduct of this litigation.”). Over the last two years, this Court has developed substantial institutional knowledge about the complex legal and factual issues raised by the novel claims in this litigation, uniquely positioning it to preside over any bellwether trials. Moreover, trying the aforementioned cases before this Court would not only promote the representativeness of those proceedings but also avoid potentially inconsistent rulings with other courts.

As a procedural matter, intercircuit assignment requires that the transferor circuit chief judge designate a need, the transferee circuit chief judge consent to the designation, and the Chief Justice of the United States formally make the assignment. *See, e.g., Jowers v. Airgas-Gulf States, Inc.*, No. 1:07-wf-17010-KMO, ECF No. 136-4 (Nov. 8, 2007) (intercircuit assignment by Chief Justice Roberts). The transferee court may also seek approval from the Chair of the Judicial Conference Committee on Intercircuit Assignments. Thus, it is Defendants’ understanding that in this case, the Court should seek approval for temporary assignment to the relevant jurisdictions from (1) Chief Justice John G. Roberts, Jr.; (2) the Chief Judges of the U.S. Courts of Appeals for the Third (*McNeal*), Fourth (*Baltimore City*), Sixth (*Craig*), and Eleventh (*DeKalb County School District*) Circuits; (3) Chief Judge Mary Helen Murguia of the U.S. Court of Appeals for the Ninth Circuit; and (4) the Chair of the Judicial Conference Committee on Intercircuit Assignments, Judge Nicholas G. Garaufis. At the appropriate time, this Court would then file a suggestion of remand with the JPML, providing for remand in conjunction with this Court’s intercircuit assignment.

³ The Court also issued Case Management Order 13 on April 23, 2024, which required all personal injury Plaintiffs “to assert their position on *Lexecon* by May 17, 2024,” and all school district Plaintiffs to “confirm whether those plaintiffs would assert *Lexecon* objections if selected as a bellwether” by April 25, 2024. (ECF No. 780). Plaintiffs who did not assert a *Lexecon* objection were deemed to have waived it. (April 19, 2024 Trans. P. 15:20-22.)

For all of these reasons, Defendants respectfully request that the Court seek temporary intercircuit assignments, pursuant to 28 U.S.C. § 292(d), to the jurisdictions to which each of the above-listed cases are to be remanded—the Eastern District of Pennsylvania (*McNeal*), the Western District of Kentucky (*Craig*), the Northern District of Georgia (*DeKalb County School District*), and the District of Maryland (*Baltimore City Board of School Commissioners*).

Dated: May 29, 2024

Respectfully submitted,

FAEGRE DRINKER BIDDLE & REATH LLP

/s/ Andrea Roberts Pierson

Andrea Roberts Pierson, *pro hac vice*

andrea.pierson@faegredrinker.com

Amy Fiterman, *pro hac vice*

amy.fiterman@faegredrinker.com

Faegre Drinker LLP

300 N. Meridian Street, Suite 2500

Indianapolis, IN 46204

Telephone: + 1 (317) 237-0300

Facsimile: +1 (317) 237-1000

KING & SPALDING LLP

/s/ Geoffrey M. Drake

Geoffrey M. Drake, *pro hac vice*

gdrake@kslaw.com

David Mattern, *pro hac vice*

dmattern@kslaw.com

King & Spalding LLP

1180 Peachtree Street, NE, Suite 1600

Atlanta, GA 30309

Telephone: + 1 (404) 572-4600

Facsimile: + 1 (404) 572-5100

Attorneys for Defendants TikTok Inc., ByteDance Inc., ByteDance Ltd., TikTok Ltd., and TikTok, LLC

COVINGTON & BURLING LLP

/s/ Mark W. Mosier

Mark W. Mosier, *pro hac vice*

mmosier@cov.com

Paul W. Schmidt, *pro hac vice*

pschmidt@cov.com

Phyllis A. Jones, *pro hac vice*

pajones@cov.com

COVINGTON & BURLING LLP

One CityCenter

850 Tenth Street, NW

Washington, DC 20001-4956
Telephone: + 1 (202) 662-6000
Facsimile: + 1 (202) 662-6291

Emily Johnson Henn (State Bar No. 269482)
ehenn@cov.com
COVINGTON & BURLING LLP
3000 El Camino Real
5 Palo Alto Square, 10th Floor
Palo Alto, CA 94306
Telephone: + 1 (650) 632-4700
Facsimile: +1 (650) 632-4800

*Attorneys for Defendants Meta Platforms, Inc. f/k/a
Facebook, Inc.; Facebook Holdings, LLC; Facebook
Operations, LLC; Facebook Payments, Inc.;
Facebook Technologies, LLC; Instagram, LLC;
Siculus, Inc.; and Mark Elliot Zuckerberg*

MUNGER, TOLLES & OLSON LLP

/s/ Jonathan H. Blavin

Jonathan H. Blavin (State Bar No. 230269)
Jonathan.Blavin@mto.com
MUNGER, TOLLES & OLSON LLP
560 Mission Street, 27th Floor
San Francisco, CA 94105-3089
Telephone: (415) 512-4000
Facsimile: (415) 512-4077

Rose L. Ehler (State Bar No. 296523)
Rose.Ehler@mto.com
Victoria A. Degtyareva (State Bar No. 284199)
Victoria.Degtyareva@mto.com
Ariel T. Teshuva (State Bar No. 324238)
Ariel.Teshuva@mto.com
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue, 50th Floor
Los Angeles, CA 90071-3426
Telephone: (213) 683-9100
Facsimile: (213) 687-3702

Lauren A. Bell, *pro hac vice*
Lauren.Bell@mto.com
MUNGER, TOLLES & OLSON LLP
601 Massachusetts Ave., NW,
Suite 500 E
Washington, D.C. 20001-5369
Telephone: (202) 220-1100
Facsimile: (202) 220-2300

Attorneys for Defendant Snap Inc.

**WILSON SONSINI GOODRICH & ROSATI
Professional Corporation**

/s/ Brian M. Willen

Brian M. Willen, *pro hac vice*
Wilson Sonsini Goodrich & Rosati
bwillen@wsgr.com
1301 Avenue of the Americas, 40th Floor
New York, New York 10019
Telephone: (212) 999-5800
Facsimile: (212) 999-5899

Lauren Gallo White (State Bar No. 309075)
Wilson Sonsini Goodrich & Rosati
lwhite@wsgr.com
Andrew Kramer (State Bar No. 321574)
akramer@wsgr.com
Carmen Sobczak (State Bar No. 342569)
csobczak@wsgr.com
One Market Plaza, Spear Tower, Suite 3300
San Francisco, CA 94105
Telephone: (415) 947-2000
Facsimile: (415) 947-2099

Christopher Chiou (State Bar No. 233587)
Wilson Sonsini Goodrich & Rosati
cchiou@wsgr.com
Matthew K. Donohue (State Bar No. 302144)
mdonohue@wsgr.com
633 West Fifth Street
Los Angeles, CA 90071-2048
Telephone: (323) 210-2900
Facsimile: (866) 974-7329

MORGAN, LEWIS & BOCKIUS LLP

/s/ Yarden R. Zwang-Weissman

Yarden R. Zwang-Weissman (SBN 247111)
yardena.zwang-weissman@morganlewis.com
300 South Grand Avenue, 22nd Floor
Los Angeles, CA 90071-3132
Tel.: 213.612.7238

Brian Ercole (*pro hac vice*)
brian.ercole@morganlewis.com
600 Brickell Avenue, Suite 1600
Miami, FL 33131-3075
Tel.: 305.415.3416

Stephanie Schuster (*pro hac vice*)
stephanie.schuster@morganlewis.com
1111 Pennsylvania Avenue NW
Washington, DC 20004-2541
Tel.: 202.373.6595

WILLIAMS & CONNOLLY LLP

/s/ Joseph G. Petrosinelli

Joseph G. Petrosinelli
jpetrosinelli@wc.com
Ashley W. Hardin
ahardin@wc.com
680 Maine Avenue, SW
Washington, DC 20024
Telephone.: 202-434-5000
Fax: 202-434-5029

*Attorneys for Defendants YouTube, LLC,
Google LLC, and Alphabet Inc.*

Dated: May 29, 2024

Respectfully submitted,

/s/ Lexi J. Hazam

Lexi J. Hazam
Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: 415-956-1000
lhazam@lchb.com

Previn Warren
Motley Rice LLC
401 9th Street NW Suite 630
Washington DC 20004
Telephone: 202-386-9610
pwarren@motleyrice.com

Co-Lead Counsel

Christopher A. Seeger
Seeger Weiss, LLP
55 Challenger Road, 6th floor
Ridgefield Park, NJ 07660
Telephone: 973-639-9100
Facsimile: 973-679-8656
cseeger@seegerweiss.com

Counsel to Co-Lead Counsel and Settlement Counsel

Jennie Lee Anderson
Andrus Anderson, LLP
155 Montgomery Street, Suite 900
San Francisco, CA 94104
Telephone: 415-986-1400
jennie@andrusanderson.com

Liaison Counsel

Joseph G. Vanzandt
Beasley Allen Crow Methvin Portis & Miles, P.C.
234 Commerce Street
Montgomery, AL 36103
Telephone: 334-269-2343
joseph.vanzandt@beasleyallen.com

Emily C. Jeffcott
Morgan & Morgan
220 W. Garden Street, 9th Floor
Pensacola, FL 32502
Telephone: 850-316-9100
ejeffcott@forthepeople.com

Federal/State Liaison Counsel

Matthew Bergman
Social Media Victims Law Center
821 Second Avenue, Suite 2100
Seattle, WA 98104
Telephone: 206-741-4862
matt@socialmediavictims.org

James J. Bilsborrow
Weitz & Luxenberg, PC
700 Broadway
New York, NY 10003
Telephone: 212-558-5500
Facsimile: 212-344-5461
jbilsborrow@weitzlux.com

Paige Boldt
Watts Guerra LLP
4 Dominion Drive, Bldg. 3, Suite 100
San Antonio, TX 78257
Telephone: 210-448-0500
pboldt@wattsguerra.com

Thomas P. Cartmell
Wagstaff & Cartmell LLP
4740 Grand Avenue, Suite 300
Kansas City, MO 64112
Telephone: 816-701 1100
tcartmell@wcllp.com

Jayne Conroy
Simmons Hanly Conroy, LLC
112 Madison Ave, 7th Floor
New York, NY 10016
Telephone: 917-882-5522
jconroy@simmonsfirm.com

1 Sarah Emery
2 **Hendy Johnson Vaughn Emery, PSC**
2380 Grandview Drive
3 Ft. Mitchell, KY 41017
Telephone: 888-606-5297
4 semery@justicestartshere.com

5 Carrie Goldberg
6 **C.A. Goldberg, PLLC**
16 Court St.
7 Brooklyn, NY 11241
Telephone: (646) 666-8908
carrie@cagoldberglaw.com

8 Ronald E. Johnson, Jr.
9 **Hendy Johnson Vaughn Emery, PSC**
600 West Main Street, Suite 100
10 Louisville, KY 40202
Telephone: 859-578-4444
rjohnson@justicestartshere.com

11 Sin-Ting Mary Liu
12 **Aylstock Witkin Kreis & Overholtz, PLLC**
17 East Main Street, Suite 200
13 Pensacola, FL 32502
Telephone: 510-698-9566
14 mliu@awkolaw.com

15 James Marsh
16 **Marsh Law Firm PLLC**
31 Hudson Yards, 11th floor
17 New York, NY 10001-2170
Telephone: 212-372-3030
jamesmarsh@marshlaw.com

18 Andre Mura
19 **Gibbs Law Group, LLP**
1111 Broadway, Suite 2100
20 Oakland, CA 94607
Telephone: 510-350-9717
amm@classlawgroup.com

21 Hillary Nappi
22 **Hach & Rose LLP**
112 Madison Avenue, 10th Floor
23 New York, New York 10016
Telephone: 212.213.8311
24 hnappi@hrsclaw.com

25 Emmie Paulos
26 **Levin Papantonio Rafferty**
316 South Baylen Street, Suite 600
27 Pensacola, FL 32502
Telephone: 850-435-7107
28 epaulos@levinlaw.com

1 Ruth Thi Rizkalla
2 **THE CARLSON LAW FIRM, P.C.**
3 1500 Rosecrans Ave., Ste. 500
4 Manhattan Beach, CA 90266
5 Telephone: 415-308-1915
6 rrizkalla@carlsonattorneys.com

7 ROLAND TELLIS
8 DAVID FERNANDES
9 **Baron & Budd, P.C.**
10 15910 Ventura Boulevard, Suite 1600
11 Encino, CA 91436
12 Telephone: (818) 839-2333
13 Facsimile: (818) 986-9698
14 rtellis@baronbudd.com
15 dfernandes@baronbudd.com

16 Alexandra Walsh
17 **Walsh Law**
18 1050 Connecticut Ave, NW, Suite 500
19 Washington D.C. 20036
20 Telephone: 202-780-3014
21 awalsh@alexwalshlaw.com

22 Michael M. Weinkowitz
23 **Levin Sedran & Berman, LLP**
24 510 Walnut Street
25 Suite 500
26 Philadelphia, PA 19106
27 Telephone: 215-592-1500
28 mweinkowitz@lfsbalw.com

Melissa Yeates
Joseph H. Meltzer
Kessler Topaz Meltzer & Check, LLP
280 King of Prussia Road
Radnor, PA 19087
Telephone: 610-667-7706
myeates@ktmc.com
jmeltzer@ktmc.com

DIANDRA "FU" DEBROSSE ZIMMERMANN
Dicello Levitt
505 20th St North
Suite 1500
Birmingham, Alabama 35203
Telephone: 205.855.5700
fu@dicellolevitt.com

Attorneys for Plaintiffs

ATTESTATION

I hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1, that the concurrence to the filing of this document has been obtained from each signatory hereto.

Dated: May 29, 2024

/s/ Andrea R. Pierson

Andrea R. Pierson